

So Ordered.

Dated: April 11th, 2016



Frank L. Kurtz
Frank L. Kurtz
Bankruptcy Judge

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IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

In re:

SAHIBPAL CORPORATION,

Debtor-in-Possession.

) Case No. 16-00814-FLK12
) ORDER APPROVING
) CONTINUED USE OF CASH
) COLLATERAL FOR
) MAINTENANCE OF YAKIMA
) ORCHARD PROPERTIES AND
) GRANTING PRIMING LIENS
) IN FAVOR OF COLUMBIA
) STATE BANK

This matter came before the Court on the 5th day of April, 2016 upon the motion of SAHIBPAL CORPORATION, as the Debtor-in-Possession ("Debtor-in-Possession"), pursuant to Bankruptcy Code Section 363 and Bankruptcy Rules 4001 and 9014, for the entry of an order authorizing the use of the cash collateral of Columbia State Bank to fund the maintenance of the following real properties located in Yakima County, Washington and referred to by Yakima County Assessor

ORDER

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PHONE 509.834.6511

1 Identification Nos. 171315-33402, 171322-13001, 171322-12002, 171322-21009 and
2 171322-21008.

3 Appearing at said hearing was the Debtor-in-Possession through its attorney
4 Donald A. Boyd; AgStar Financial Services, FLCA through its attorney Roger
5 Bailey; Hopkins Western Fund, LLC, as trustee for the benefit on a parity of all
6 Series "W" Debenture Holders, as to an undivided 33.34% interest; Frank Cnossen
7 and Amber Cnossen, as to an undivided 22.22% interest; Mountain West IRA FBO
8 Robert L. Ward IRA, as to an undivided 22.22% interest; and C. Douglas Gross, as
9 to an undivided 22.22% interest (collectively referred to hereafter as "Hopkins")
10 through its attorney Jeffrey Simpson; Columbia State Bank through its attorney
11 Jason Ayres; and Clark – Jennings & Associates through its attorney Paul Larson.

12 The Debtor-in-Possession gave written notice of the hearing on the Motion to
13 all creditors on the Master Mailing List. The Court reviewed the pleadings filed
14 herein, heard the testimony of Amritpal Dhanoya, Brian Birdsall and David
15 Smeback, reviewed exhibits 1 through 19 which were admitted into evidence by
16 stipulation of all those parties at the hearing, and heard the argument of counsel.

17 The Court finds that good cause exists to have heard and considered the
18 Debtor's motion for the continued use of cash collateral for purposes of funding the
19 maintenance of the above-referenced real property assets of the Estate and finds
20 that no other source of adequate financing exists unless a priming lien is granted
21 that is subordinate to the mortgage lien of AgStar Financial Services, FLCA but
22 senior to the mortgage lien of Hopkins to the extent of funds are used for the
23 preservation or maintenance of the underlying properties whose liens are being
24 primed.

25 **IT IS HEREBY ORDERED THAT:**

1. In addition to the findings set forth herein, the Court's oral findings of
2 fact and conclusions of law shall stand as the Findings of Fact and Conclusions of
3 Law with regard to this proceeding;

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2. Debtor-in-Possession is hereby authorized, solely in accordance with the terms hereof, to use cash collateral of the estate from funds payable to the Debtor-in-Possession and which represent proceeds of its 2015 crop for the uses and purposes of its orchard operations and in the following amounts for the following purposes associated with the Yakima County properties for the 30 day budget period only:

Purpose	Cost	per acre	30 day	60 day
			budget	Budget
Irrigation water costs	21,568	180	21,568	
Spray to remove bloom	17,400	145	12,500	4,900
Irrigation labor costs	24,000	200	3,500	5,000
Cover sprays for insects	42,000	350	5,000	5,000
Mowing weeds (see note below)	15,000	75	5,000	2,000
Fuel	480	4	250	
Repairs on irrigation system	480	4	480	
labor - sprays , R/M	15,600	130	5,000	5,000
Total estimate - orchard costs	136,528	1,088	53,298	21,900
Brian Birdsall consultant fees			2,500	2,500
Cash Collateral needs			55,798	24,400

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2 Note- this budget is based on no significant needs to irrigation system at start up, and all pumps
3 and feeds from Irrigation District and wells are functioning adequately for needed flow
4 of irrigation water. May not be able to determine until irrigation system is started for the
5 season.

6 3. The Debtor-in-Possession is authorized to receive from C.M. Holtzinger
7 Fruit Company and/or Highland Fruit Company the monies held which are payable
8 to the Debtor-in-Possession and/or its creditors on account of the Debtor's 2015 crop
9 up to total the amount of \$55,798.00 for the 30-day budget items, and any such
check shall be made payable by those respective entities solely to the Debtor-in-
10 Possession and shall be deposited solely in the Debtor-in-Possession's bank account.

11 4. The Debtor-in-Possession's authority to use cash collateral is limited to
12 the expense amounts set forth in paragraph 2 for the 30 day budget period in the
13 amounts listed for each line item.

14 5. As part of the adequate protection of the interests of Columbia State
15 Bank for use of said cash collateral under this Order and that \$50,000.00 of cash
16 collateral previously authorized to be used pursuant to the Court's prior cash-
17 collateral order (*ECF # 25*), Columbia State Bank is granted a priming lien
18 pursuant to section 364 of the Code, junior only to the existing first mortgage lien of
19 AgStar Financial Services, as follows:

20 (a) To the extent cash collateral funds, the Debtor's use of which
21 was previously granted for purposes of preserving of the 2016
22 crops and pursuant to the Court's prior Order approving interim
23 use of cash collateral (*ECF # 25*), were used upon or with respect
24 to those Estate properties located in Yakima County, Columbia
25 Bank is hereby granted a priming lien in the amount of
\$25,000.00 against those Yakima County properties and junior
only to the first mortgage lien of Agstar Financial Services.

- (b) To the extent cash collateral funds, the Debtor's use of which was previously granted for purposes of preserving of the 2016 crops and pursuant to the Court's prior Order approving interim use of cash collateral (ECF # 25), were used upon or with respect to those Estate properties located in Grant County (Grant County Parcel ID Nos. 312545000 and 312546000), Columbia Bank is hereby granted a priming lien in the amount of \$25,000.00 against those Grant County properties and junior only to the first mortgage lien of Agstar Financial Services.
- (c) To the extent that additional cash collateral is used as authorized by this Order for the maintenance and preservation of the Yakima County real properties pursuant to this Order per Section 3 above, then Columbia Bank is hereby granted a priming lien in the amount of that additional cash collateral used as against those Yakima County properties and junior only to the first mortgage lien of Agstar Financial Services.
- (d) In the event Columbia State Bank advances additional funds for purposes of paying those 2016 irrigation assessments and costs attributable to the Grant County real property, then Columbia State Bank shall hold an additional priming lien up to the amount of Thirty Thousand Dollars (\$30,000) which lien shall be junior only to the mortgage lien of AgStar Financial Services and which lien shall be payable from the net proceeds from the sale of said property at closing.

6. The priming liens granted to Columbia Bank by this Order shall be perfected and enforceable by operation of law upon execution and entry of this Order by the Court without regard to whether such priming liens are perfected

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1 under applicable non-bankruptcy law. Columbia Bank is authorized to record
2 Mortgages on the Yakima County real property and Grant County real property to
3 secure its interests in the properties for purposes of adequate protection. The initial
4 Mortgage on the Yakima County real property shall be in the maximum sum of
5 \$80,798.00 subject to an agreed rate of interest and the initial Mortgage on the
6 Grant County real property shall be in the maximum sum of \$25,000.00 subject to
7 an agreed rate of interest. To the extent additional use of cash collateral is granted,
8 Columbia Bank is authorized to record a Modification of either Mortgage, which
9 increases the maximum amount secured. The Debtor-in-Possession shall cooperate
10 and execute agreed forms of the Mortgages and any Modifications for recording.
11 Columbia Bank is additionally authorized to record this Order to ensure its priority
12 on each property is adequately disclosed in the real property records of Yakima
13 County and Grant County.

14 7. The Debtor-in-Possession shall employ Brian Birdsall as a consultant
15 to oversee the use of the cash collateral funds approved pursuant to this Order at an
16 hourly rate of \$150.00 per hour up to a monthly payment of \$2,500.00. Brian
17 Birdsall shall review and approve all expenditures and payment of all invoices and
18 wages incurred pursuant to the approved purposes set forth in Section 2, above.

19 8. In the event additional use of cash collateral is to be requested by the
20 Debtor-in-Possession for the 60-day budget items and/or future maintenance budget
21 needs, the Debtor-in-Possession may petition the court for additional use of cash
22 collateral for the purpose of preserving and maintaining the Estate's Yakima real
23 property referenced above.

24 9. The provisions of this Order and the effect of any actions taken
25 hereunder shall survive issuance and entry of any order converting this case to one
under Chapter 7 of the Bankruptcy Code or dismissing this Chapter 12 case. The
priorities, liens and security interests granted herein shall continue in this or any
superseding case under the Bankruptcy Code, and any such liens and security

interests shall maintain their priority as provided herein until satisfied and discharged subject to the Bankruptcy Code.

10. This Order, and each of its terms, shall be effective immediately upon entry by the Court and the automatic stay of judgment provisions of Bankruptcy Rule 8017(a) shall not apply.

//END OF ORDER//

Presented by:

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Approved as to form by:

Approved via e-mail on April 7, 2016
Roger W. Bailey, WSBA# 26121
Bailey & Busey, PLLC
Attorneys for AgStar Financial Services,
FLCA

Telephonic statement by Jeffrey Simpson
of no objection to form but he did not have
client authorization to approve Order
Jeffrey R. Simpson, WSBA # 8577
Talbott, Simpson & Davis, P.S.
Attorneys for Hopkins

Jason Ayres, WSBA# 39141
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